IN THE COURT OF APPEALS OF IOWA

No. 7-137 / 96-0494

JUN 26 1997

ROPO, INC., an Iowa Corporation,
d/b/a BUCKO'S ANITA TAVERN,
Petitioner-Appellant/Cross-Appellee,

000429

vs.

ALCOHOLIC BEVERAGES DIVISION,
DEPARTMENT OF COMMERCE,
DEPARTMENT OF PUBLIC SAFETY,
STATE OF IOWA,
Respondents-Appellees/Cross-Appellants.

Appeal from the Iowa District Court for Cass County, Leo Connolly, Judge.

The petitioner appeals from the district court's judicial review ruling on the decision by the Alcoholic Beverages Division of the Department of Commerce imposing a suspension on the petitioner's liquor license. **AFFIRMED IN PART; REVERSED IN PART.**

James W. Mailander of Mailander Law Office, Anita, for appellant.

Thomas J. Miller, Attorney General, and Jeffrey D. Farrell, Assistant Attorney General, for appellee.

Heard by Sackett, P.J., and Huitink and Streit, JJ.

STREIT, J.

The petitioner appeals from the district court's judicial review ruling on the decision by the Alcoholic Beverages Division of the Department of Commerce imposing a 120-day suspension on the petitioner's liquor license for serving liquor to an intoxicated person in violation of Iowa Code section 123.49(1). The respondents cross-appeal, asserting the district court erred in reducing the suspension to sixty days.

On October 16, 1993, at approximately 8:00 p.m., Ryan Sneller and a companion arrived at Bucko's Anita Tap which is owned by petitioner, Ropo, Inc. and located in Anita, Iowa. The nineteen-year-old Sneller had been drinking and several witnesses testified he was intoxicated while in the tavern. Sneller left the tavern and became involved in a high-speed car chase with law enforcement officials. The chase ended in a one-vehicle accident killing Sneller. Sneller had a blood alcohol level of .186 at the autopsy.

The Department of Public Safety filed a complaint with the Alcoholic Beverage Division of the Department of Commerce against Ropo asserting it sold or served alcohol to an intoxicated person in violation of Iowa Code section 123.49(1). The case proceeded to a hearing before an administrative law judge. The Department presented evidence showing Sneller had been drinking at the tavern for two and one-half hours and appeared to be intoxicated. The Department also presented blood alcohol evidence demonstrating he had been drinking at the bar.

At the close of the Department's case, Ropo moved to dismiss on the basis of lack of sufficient evidence it served an intoxicated person. The administrative law judge denied the motion. The administrative law judge subsequently determined Ropo served Sneller when he was intoxicated in violation of Iowa Code section 123.49(1). The administrative law judge suspended Ropo's liquor license for 120-days after determining Sneller's intoxication was a factor in the automobile accident which claimed his life. On Ropo's appeal, the administrator of the alcoholic beverage division affirmed and adopted the proposed decision.

Ropo filed a petition for judicial review challenging the division's decision. On February 26, 1996, the district court entered a decision which affirmed the suspension except for reducing it to sixty days. On March 20, 1996, Ropo filed a notice of appeal. On March 25, 1996, the Department of Public Safety filed a notice of cross-appeal. On March 27, 1996, this court stayed the modified license suspension.

I. Standard of Review. The scope of review in cases arising out of the Iowa Administrative Procedures Act is limited to the corrections of errors at law. *Hundt v. Iowa Dep't of Human Serv.*, 545 N.W.2d 306, 309 (Iowa 1996); *Foods, Inc. v. Iowa Civil Rights Comm'n*, 318 N.W.2d 162, 165 (Iowa 1982). A district court decision rendered in an appellate capacity is reviewed to determine whether the district court correctly applied the law. *Houlihan v. Employment Appeal Bd.*, 545 N.W.2d 863, 865

(Iowa 1996); *Foods*, 318 N.W.2d at 165. To make that determination, this court applies the standards of Iowa Code section 17A.19(8) (1995) to the agency action to determine whether our conclusions are the same as the district court's. *Houlihan*, 545 N.W.2d at 865; *Jackson County Pub. Hosp. v. Public Employment Relations Bd.*, 280 N.W.2d 426, 429-30 (Iowa 1979). The scope of review encompasses a review of the entire record and is not limited to the agency's findings. *Higgins v. Iowa Dep't of Job Serv.*, 350 N.W.2d 187, 191 (Iowa 1984); *Presthus v. Barco, Inc.*, 531 N.W.2d 476, 479 (Iowa App. 1995).

II. Sufficiency of the Evidence. Ropo claims the agency erred in not granting the motion to dismiss at the close of the prosecution's case for the lack of sufficient evidence showing it served alcohol to an intoxicated person, and there was a lack of substantial evidence supporting the agency finding it served alcohol to Ryan Sneller while he was intoxicated.

Section 17A.19(8)(f) provides in a contested case the court shall grant relief from an agency decision which is not supported by substantial evidence made before the agency when the record is viewed as a whole. *Second Injury Fund v. Klebs*, 539 N.W.2d 178, 180 (Iowa 1995); *Eaton v. Iowa Dep't of Job Serv.*, 376 N.W.2d 915, 916-17 (Iowa App. 1985). Evidence is substantial to support an agency's decision when a reasonable person would find it adequate to reach a conclusion. *Klebs*, 539 N.W.2d at 180; *Eaton*, 376 N.W.2d at 917. The question is not whether the evidence

might support a different finding, but whether the evidence supports the findings actually made. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731, 734 (Iowa App. 1986). The fact two inconsistent conclusions can be drawn from the evidence does not mean one of those conclusions is not supported by substantial evidence. *Id.*

There were several witnesses at the tavern who claimed they saw Sneller with mixed drinks. One of the witnesses testified she saw Ropo's bartender sell Sneller a drink. Roco contends evidence of Sneller drinking several glasses of dark fluids, occasionally two at a time, in glasses usually only used to serve mixed drinks does not prove they were served to him or they contained alcohol. This is without merit. Such evidence supports a conclusion Sneller was served intoxicating beverages at Ropo's. Although the bartender denied he served alcohol to Sneller, the judge determined he lacked credibility because he was an interested party due to the civil and criminal proceedings involving him. The record also contains expert testimony by the administrator of the DCI crime lab that Sneller could have not have had the level of alcohol which was in his body at the time of his death unless he drank alcoholic beverages at the tavern.

We find there is substantial evidence to support the administrative law judge and district court findings Ropo served an intoxicated person in violation of Iowa Code section 123.49(1). Similarly, we find there was prima facie evidence to support the denial of petitioner's motion to dismiss at the end of the State's case. We affirm.

II. 120-Day Suspension. Iowa Code section 123.50 provides "the conviction of any liquor control licensee, . . . for a violation of any of the provisions of section 123.49, . . . is grounds for the suspension or revocation of the license or permit by the division or the local authority. *See Sullivan v. Iowa Departmental Hearing Bd. of Iowa Beer and Liquor Control Dept.,* 325 N.W.2d 923, 927 (Iowa App. 1982). Having concluded petitioner's conduct violated Iowa Code section 123.49(1) and a penalty may be imposed for such a violation, we must consider whether the length of the suspension of petitioner's license was proper in this case.

Petitioner claims the 120-day suspension imposed by the agency was arbitrary, capricious, and unreasonable. The district court reduced the suspension to sixty days. The Iowa Department of Public Safety in its cross-appeal claims the district court erred in modifying the length of the license suspension.

Iowa Code section 17A.19(8) gives the district court authority to reverse, modify, or grant any other appropriate relief from the agency action, if there was an error of law; or the agency action is unsupported by substantial evidence when viewed as a whole; or if the agency action is unreasonable, arbitrary or capricious or characterized by an abuse of discretion. *See* Iowa Code § 17A.19(8) (1997). The district court did not indicate in its decision on what grounds it found the suspension should be reduced. We believe the 120-day suspension of petitioner's license was a proper penalty for his violation of the statute. The original suspension is supported

by substantial evidence and the agency action was not arbitrary and capricious. We find no error at law. The original penalty of a 120-day suspension should be reinstated. We reverse the decision of the trial court.

III. Evidence. Petitioner also claims the agency erred in admitting evidence of criminal convictions of the petitioner's bartender for the sale of alcohol to a minor and sale to an intoxicated person. The administrative law judge initially admitted evidence of the bartender's plea bargain involving the sale of alcohol to a minor and sale to an intoxicated person. The judge later excluded the evidence after determining the plea bargain did not contain an admission of guilt. Ropo further claims the agency acted unreasonably in discounting the testimony of witnesses regarding the amount of alcohol Sneller drank before arriving on the petitioner's premises. Petitioner's claims are without merit.

We do not find reversible error committed by the administrative law judge on these issues.

AFFIRMED IN PART; REVERSED IN PART.

Huitink, J., concurs; Sackett, P.J., concurs in part and dissents in part.

SACKETT, P.J. (concurring in part; dissenting in part)

I concur in part and dissent in part. I would affirm.